Supreme Court, U.S.
FILED
APR 20 1998
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No. 97-1336

In The

Supreme Court of the United States

October Term, 1997

OWEN CHARLES,

Petitioner,

vs.

MARILYN CHARLES,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Connecticut

RESPONDENT'S BRIEF IN OPPOSITION

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12 pp

QUESTION PRESENTED FOR REVIEW

Whether the State of Connecticut Supreme Court correctly decided that the Mashantucket Pequot Indian Settlement Act of 1983 conferred civil jurisdiction upon the state of Connecticut in a private dissolution action pursuant to 25 U.S.C. §§ 1322 and 1755.

PARTIES TO PROCEEDINGS BELOW

Respondent agrees with the Petitioner's list, Pet., p. 1.

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OPINION BELOW

Respondent agrees with Petitioner's statement.

STATEMENT OF JURISDICTION

Respondent agrees with Petitioner's statement.

STATEMENT OF THE CASE

The Respondent agrees with the Petitioner's STATEMENT OF THE CASE (Pet., pp. 3-6) *except* that the State Supreme Court found that in enacting the Settlement Act, Congress intended to confer, *i.e.* grant, both civil and criminal jurisdiction to the state of Connecticut *without* the need for any further state or Tribal action. (Emphasis added).

REASONS FOR DENYING THE WRIT

The Connecticut Supreme Court's decision in this case is a direct application of its well reasoned decision in *State v. Spears*, 234 Conn. 78, 662 A.2d 80, *cert. denied*, 516 U.S. 1009, 116 S. Ct. 565, 133 L. Ed. 2d 490 (1995).

The action before this Court is a civil dissolution of marriage. Its significance does not extend beyond the private interests of the husband and wife who are the only parties herein. The Mashantucket Pequot Tribal Nation is not a party to this action. It is a matter between a husband and wife and has no effect on tribal sovereignty or self-government. There are no important issues of Federal law involved here, the case sets no precedent and the issue is unlikely to reoccur.

I.

THE DECISION OF THE CONNECTICUT SUPREME COURT RELIED UPON AND IS CONSISTENT WITH THE DECISIONS OF THE UNITED STATES SUPREME COURT AND STATE LAW.

The assumption of state civil jurisdiction over the Petitioner in this action is based upon a direct application of the rational used by the Connecticut Supreme Court in its decision in the *Spears* case. (The *Spear's* decision was denied Certiorari on December 4, 1995).

In *Spears*, after a exhaustive and deliberate analysis of the provisions within the Mashantucket Land Claims Settlement Act of 1983[1], Federal law and statutes, the Connecticut Supreme Court concluded that the state had acquired criminal jurisdiction over the Mashantucket reservation.

Here, the Connecticut Supreme Court was again asked to evaluate the provisions of the Settlement Act in order to determine whether the state had been granted civil jurisdiction over the Mashantucket Pequot Indians and reservation land. The court unanimously concluded that the same principals of statutory construction, Federal law and rational employed in *Spears* to establish state criminal jurisdiction were equally applicable to the civil jurisdiction question raised in this case.

The Settlement Act reflects a compromise settlement between the federal government, the state of Connecticut and the tribe over a civil land claims action. The tribe "was

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1. The Mashantucket Pequot Indian Claims Settlement Act of 1983, Public Law 98-134, § 2, Oct. 18, 1983, 97 Stat. 851, codified at 25 U.S.C. §§ 1751-60.

represented in the action as well as in the hearings before Congress, and manifested its consent to the terms of the Settlement Act." 25 U.S.C. § 1751(e). *Spears*, at 83. At the time the Settlement Act was enacted, there was no tribal court and it was clearly the intent and desire of the Mashantucket Pequot tribe to have continuing civil jurisdiction in the state of Connecticut.

In reaching its decision, the Connecticut Supreme Court relied upon this Court's determination that the only mechanism by which a tribe could manifest its consent to state jurisdiction is by the provisions set forth in 25 U.S.C. § 1326. *Kennerly v. District Court of Montana*, 400 U.S. 423, 429, 91 S. Ct. 480, 483, 27 L. Ed. 2d 507 (1971). The Court was equally guided by *Negonsott v. Samuels*, 113 S. Ct. 1119, 1122 (1993), where this Court held that in determining the effect of a statute, "[o]ur task is to give effect to the will of Congress. . . . An enactment should be read so as to give effect to every clause and word of the statute." (Internal quotations marks omitted).

In applying the above principals, the Connecticut Supreme Court has consistently held that 25 U.S.C. § 1755 of the Settlement Act effectively eliminated the consent provision contained in section 1326 and was an "immediate, definitive grant of state jurisdiction . . ." not requiring any further Tribal consent. *Spears* at 87. (*Also see* Pet., p. 2).

Again here, the Court confirmed its *Spears* holding and reiterated its conclusion that the Settlement Act was in itself tribal consent to state jurisdiction; "[i]n agreeing to the Settlement Act's provisions, . . . the tribe relinquished its right to require its consent to state jurisdiction". *Charles v. Charles*, 243 Conn. 255, 701 A.2d 650, 655 n.15 (Conn. 1997).

It follows then that, under 25 U.S.C. § 1322,

> those civil laws of [Connecticut] that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

25 U.S.C. § 1322(a).

The Petitioner's residence on the reservation can not enable him to escape the jurisdiction of the state of Connecticut in an action for dissolution of marriage.

II.

THE MATTER BEFORE THIS COURT IS A CIVIL ACTION FOR DISSOLUTION OF MARRIAGE. IT HAS NO SIGNIFICANCE BEYOND THE PRIVATE INTERESTS OF THE HUSBAND AND WIFE PARTIES HEREIN.

The only parties to this action for dissolution for marriage are the Petitioner husband and Respondent wife. The Mashantucket Pequot Tribe is not a party to this action and there are no tribal assets, property, rights or interest being sought. The parties were married off the reservation, in New Haven, Connecticut and they never resided together on the Mashantucket reservation. The jurisdiction of the state of Connecticut is confined to and concerned only with the rights and interests of the respective parties.

The Petitioner attempts to use his status as a Mashantucket Pequot tribal member to transform a dissolution of marriage civil action into a Federal matter of tribal sovereignty. This court has ruled that

> tribal sovereignty does not impede state court jurisdiction unless the exercise of state-court jurisdiction in [the] case would interfere with the right of the tribal Indians to govern themselves under their own laws.

Golden Hill Paugussett Tribe of Indians v. Town of Southbury, 231 Conn. 563, 651 A.2d 1246, 1253 (1995), (Internal quotation marks omitted.) *citing Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C.*, 467 U.S. 138, 104 S. Ct. 2267, 81 L. Ed. 2d 113 (1984).

When appropriate, issues involving tribal sovereignty are considered in decisions involving Indians, but, "[o]ur recognition of tribal sovereignty does not . . . render all matters touching upon tribal decisions nonjusticiable." *Golden Hill Paugussett Tribe of Indians v. Town of Southbury*, 231 Conn. 563, 651 A.2d 1246, 1253 (1995). The right of an individual Indian Citizen to sue or be sued in the courts of this land has long been recognized by our judicial system. *Poafpybitty v. Skelly Oil Company*, 390 U.S. 365, 370, 88 S. Ct. 982, 985, 19 L. Ed. 2d 1238, 1243.

A suit whose substance is domestic relations generally will not be entertained in federal court even if it is brought under the guise of a federal question. *Firestone v. Cleveland Trust Co.*, C.A. 6 (Ohio) 1981, 654 F.2d 1212; the whole subject of domestic relations belongs to laws of the states and not the laws of the United States. *Wickins v. Rogers*, C.A. 4 (S.C.) 1978, 581 F.2d 399. An action for a dissolution of marriage is a civil action. *Smith v. Smith*, 150 Conn. 15, 19, 183 A.2d 848 (1962).

In *Rice v. Rehner*, 103 S. Ct. 3291, 3295 463 U.S. 713, 77 L. Ed. 2d 961 (1983), this Court recognized that

> Congress has to a substantial degree opened the doors of reservations to state laws. . . . even on reservations, state laws may be applied unless such application would interfere with reservation self-government or would impair a right granted or reserved by federal law.

(Internal quotations omitted) (Citations omitted). In addition, "state laws may be applied to tribal Indians on their reservations if Congress has expressly so provided." *California v. Cabazon Band of Mission Indians*, 107 S. Ct. 1083, 1087, 480 U.S. 202, 94 L. Ed. 2d 244 (1987). The Settlement Act expressly provides Congressional approval for the state of Connecticut to assume civil jurisdiction over the Mashantucket reservation.

Indeed, the failure of Connecticut to recognize and exercise its civil jurisdiction over Indians residing on reservation lands could violate their civil rights under the Equal Protection and Due Process clauses of the Fourteenth Amendment. *Golden Hill Paugussett Tribe of Indians v. Town of Southbury*, 231 Conn. 563, 651 A.2d 1246 (1995), *citing Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C.*, 467 U.S. 138 104 S. Ct. 2267, 81 L. Ed. 2d 113 (1984). "Indian tribes have vestiges of sovereignty which must be guarded carefully, but reservations are not analogous to foreign states." *White v. Califano*, 437 F. Supp. 543, 547 (1977).

The Petitioner is a citizen of the state of Connecticut because Indians, as citizens of the United States, automatically become citizens of the state of their residence. *Deere v. State of New York*, 22 F.2d 851, 852 (D.C. N.D. N.Y. 1927). Accordingly, he is afforded all of the privileges and benefits of such citizenship and is subject to state civil jurisdiction.

The action before this Court is not a issue of Federal importance or tribal sovereignty. In reaching its decision, the

Connecticut Supreme Court considered and was guided by well established principals of statutory interpretation to effectuate the expressed Congressional purpose and intent contained within the language in the Settlement Act. The correct decision was reached.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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